

FILED

MAY 28 2009

*Ray Beamer*  
CLERK OF THE  
HAMILTON SUPERIOR COURT

IN THE HAMILTON SUPERIOR COURT NO. 3

STATE OF INDIANA

Cause No. 29D03-0712-FC-0433

VS

Michael B. Flynn

SENTENCING ORDER

Comes now the State of Indiana by Douglas G. Swift, Deputy Prosecuting Attorney, and the defendant, Michael B. Flynn, in person and by counsel, Bruce Boje and James Voyles, for sentencing hearing. Defendant entered a plea of guilty on February 19, 2009.

The Court being duly advised now finds that the defendant's plea is knowingly and voluntarily made, and has a basis in fact. Pre-sentence Investigation report is filed and accepted. The Court examines the defendant's criminal record as filed. Plea of guilty is accepted and judgment of Conviction is entered as to COUNT 3: OFFICIAL MISCONDUCT, CLASS D FELONY.

The Court makes findings on the record regarding aggravating and mitigating factors.

The defendant is now sentenced as follows:

One and one-half (1.5) years in the Indiana Department of Corrections, with two (2) days ordered executed and the execution of 543 days ordered suspended. The Defendant shall be placed on probation for a period of 543 days, under the standard and special conditions as set forth in the Order of Probation. Defendant given 2 total days credit for 1 actual day already served (12/03/2007) and attributable to this case as of the date of sentencing. \$164.00 Court Cost.

Upon successful completion of probation, without violation, the State would not object to a sentence modification which would modify the conviction to an A Misdemeanor under I.C. 35-50-2-7 (b), provided Defendant is otherwise eligible and files such petition within 60 days of the successful termination of probation.

Defendant may petition the Court for early termination of probation upon successful completion of all special terms.

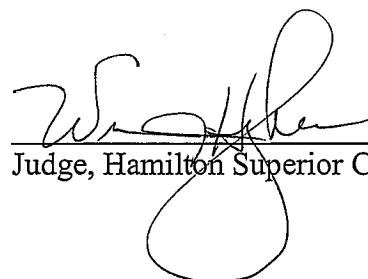
The State's motion to dismiss ALL REMAINING COUNTS is renewed and hereby granted.

All pending Court dates hereby ordered vacated.

Bond hereby ordered released and surety discharged.

Payment of fine/Court costs stayed 270 days.

SO ORDERED this May 28, 2009.

  
\_\_\_\_\_  
Judge, Hamilton Superior COURT NO. 3

Distribution:

1. Prosecuting Attorney
2. Probation Services
3. Bruce Boje and James Voyles, Attorney for the Defendant
4. Hamilton County Sheriff

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vs.

CAUSE NO. 29D03-0712-FC-0433

Michael B. Flynn

PLEA AGREEMENT

Comes now the State of Indiana by Douglas G. Swift, Deputy Prosecuting Attorney, and the defendant, Michael B. Flynn, in person and by counsel, Bruce Boje and James Voyles, and hereby enter into this plea agreement made pursuant to negotiations. The parties agree as follows:

1. This agreement, having been signed by all parties, shall be introduced into evidence by stipulation at the time of the defendant's guilty plea hearing.

2. The State agrees to make the following recommendations to the Court. That should the defendant enter a plea of guilty to the charge(s) of COUNT 3; OFFICIAL MISCONDUCT, CLASS D FELONY, the State recommends that the defendant receive the following sentence:

Argued sentence to the discretion of the Court with the stipulation that the executed portion of the sentence ordered at the time of sentencing shall not exceed 1 year. All other terms and conditions of the Defendant's sentence shall be left to the full discretion of the Court.

Should the Defendant not be granted alternative misdemeanor treatment at the time of sentencing, and upon successful completion of probation, without violation, the State would not object to a sentence modification which would modify the conviction to an A Misdemeanor under I.C. 35-50-2-7 (b), provided Defendant is otherwise eligible and files such petition within 60 days of the successful termination of probation.

3. The State agrees to dismiss:  
ALL REMAINING COUNTS

(✓) 4. The defendant acknowledges he/she has received a copy of the information, has read and discussed it with his/her attorney and understands all allegations made against him/her and the nature of the charge(s) against him/her.

(✓) 5. The defendant acknowledges that he/she has given his/her attorney all of the facts known to him/her concerning the matter mentioned in the information, including all witnesses in his/her behalf, and believes that his/her attorney is fully informed as to all such matters, and

further, that his/her attorney has since advised him/her as to any possible defenses he/she might have in this case.

(✓) 6. The defendant acknowledges that his/her attorney has advised him/her that the maximum penalty which the law provides for the charge(s) to which he/she is pleading guilty is:

Class A felony: imprisonment for a fixed term of between twenty (20) years and fifty (50) years, with an advisory sentence being thirty (30) years; in addition, a fine of not more than ten thousand dollars (\$10,000.00).

Class B felony: imprisonment for a fixed term of between six (6) years and twenty (20) years, with an advisory sentence being ten (10) years; in addition, a fine of not more than ten thousand dollars (\$10,000.00).

Class C felony: imprisonment for a fixed term of between two (2) years and eight (8) years, with an advisory sentence being four (4) years; in addition, a fine of not more than ten thousand dollars (\$10,000.00).

Class D felony: imprisonment for a fixed term of between six (6) months and three (3) years, with an advisory sentence being one and one-half (1 and ½) years; in addition, a fine of not more than ten thousand dollars (\$10,000.00). Or, Alternative sentencing as a Class A Misdemeanor, with up to one (1) year imprisonment and a fine of not more than five thousand dollars (\$5,000.00).

Further, the defendant acknowledges that his/her attorney has advised him/her that pursuant to statute, the Court in certain instances may only be able to suspend that part of a sentence in excess of the minimum sentence if the defendant has a prior unrelated felony conviction and that such prior conviction(s) may possibly be used by the Court to increase the possible sentence and/or the possibility of the imposition of consecutive sentences.

Further, the defendant acknowledges that his/her attorney has advised him/her that the Court, pursuant to statute, can impose consecutive and/or concurrent sentences pursuant to statute.

(✓) 7. The defendant understands that the State and Federal Constitutions guarantee him/her certain rights, among them being the rights to a public trial by jury, to a speedy trial, to be free from self-incrimination to confront and cross-examine the witnesses against him/her, to have compulsory process for obtaining witnesses in his/her behalf, to require the State to prove his/her guilt beyond a reasonable doubt, and if convicted, to take an appeal to the Court of Appeals or Supreme Court of Indiana, to have appointed counsel for conducting the trial of the case, and to have appointed counsel for purposes of said appeal if indigent. He/she further understands that the entry of his/her guilty plea pursuant to this agreement constitutes a waiver of those rights. He/she further admits the truth of the facts alleged in the information to which he/she pleads guilty, and understands that the guilty plea amounts to a conviction.

(✓) 8. The defendant knows the Court will not accept a plea of guilty from anyone who claims to be innocent, and he/she makes no claim of innocence. He/she now state that he/she did commit the crime(s) to which he/she is pleading guilty. The defendant further acknowledges that his/her attorney has advised him/her that by his/her plea of guilty, he/she is admitting to the truth of all facts alleged in the indictment and/or information or to an offense included thereunder and that upon entering of such plea the Court shall proceed with judgment and sentence.

(✓) 9. The defendant understands that the court will review the agreement along with the Presentence Investigation report of the Department of Probation Services and that the defendant understands that the Court is not a party to any such plea agreement which may have been made between the prosecuting attorney and the defense and therefore not bound thereby. And, in the event the Court rejects the plea agreement, the agreement is void.

(✓) 10. The defendant acknowledges that his/her guilty plea is entered knowingly, intelligently and voluntarily and without coercion, duress, influence or other promise of leniency.

(✓) 11. The defendant acknowledges that he/she is entitled to have all of his/her rights explained to him/her and that he/she may have any questions answered for him/her by the Court.

(✓) 12. The defendant acknowledges that he/she is satisfied with his her counsel's representation and competency exhibited in this matter and that he/she believes this agreement is in his/her best interest.

(✓) 13. Unless otherwise provided for in the State's recommendation under paragraph two (2) of this plea agreement, the defendant hereby waives all rights to request, file motion for, or be considered for: 1) a modification of sentence under Indiana Code 35-38-1-17, or 2) for a reduction in sentence under Indiana Code 35-38-1-23.

(✓) 14. The defendant understands that he/she has the right to be sentenced within thirty (30) days of entering a plea of guilty before the Court, and by signing this agreement, the defendant does now waive his/her right to be sentenced within thirty (30) days of entering a guilty plea pursuant to this agreement.

(✓) 15. This agreement embodies the entire agreement between the parties, and no promises or threats have been made or inducements given the defendant by the State which are not set out herein. The defendant asks the Court to accept and enter a plea of guilty in reliance upon his/her statements made in this motion and hearing concerning such plea negotiations.

Signed by me in open Court or in the presence of my attorney this 16<sup>th</sup> day of February, 2009.

State of Indiana vs. Michael B. Flynn  
Plea Agreement

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Page 4

DATED: 2/16/09

  
Michael B. Flynn  
DEFENDANT

DATED: 2/19/09

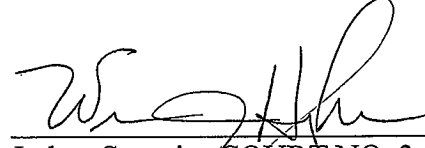
  
Bruce Beje and James Voyles  
ATTORNEY FOR DEFENDANT

DATED: 12/30/08

  
Douglas G. Swift  
DEPUTY PROSECUTING ATTORNEY

This court having personally addressed the defendant and having advised him/her of his/her rights and having determined that he/she understands the same and has entered his plea voluntarily and not by reason of any promises, force or threats having been made to him/her, now accepts defendant's plea of guilty and orders this Plea Agreement, Certificate of Counsel and/or Certificate of the Victim to be made a part of the transcript of the entire proceedings of the guilty pleas hearing and sentence herein.

ENTERED: 5/28/09

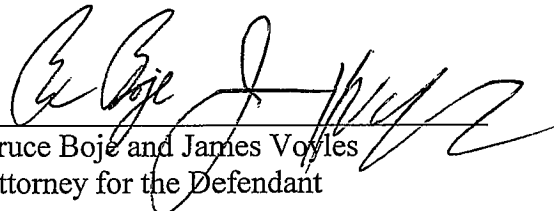
  
Judge, Superior COURT NO. 3

CERTIFICATE OF COUNSEL

The undersigned, as attorney for the defendant above named, hereby certifies as follows:

1. I have read and fully explained to the defendant all the accusations against the defendant which are set forth in the information in this case;
2. I have discussed the forgoing written plea agreement with the defendant and to the best of my knowledge and belief each statement set forth therein is in all respects accurate and true;
3. The plea of guilty, as offered by the defendant, accords with my understanding of the facts as related to me by the defendant, and is consistent with my advice to the defendant.
4. In my opinion, the pleas of guilty as offered by the defendant is voluntarily and understandingly made; is in the best interest of the defendant and in my opinion there would be no advantage to the defendant in proceeding to trial in this cause; and I recommend to the Court that such plea of be now accepted and entered on behalf of the defendant.

Signed by me in open Court in the presence of the defendant above named this 19<sup>th</sup> day of February, 2009.

  
Bruce Boje and James Voyles  
Attorney for the Defendant